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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/05/2000

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04/26/2006

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EXAMINER

WOITACH, JOSEPH T

ART UNIT

PAPER NUMBER

1632

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT

PAPER

04212006

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

The amendment filed on February 27, 2006 is non-responsive (MPEP § 821.03).

See attached action.

DETAILED ACTION

This application filed September 5, 2000, claims benefit to EPO applications: EP 99202858.9 filed September 2, 1999; and EP 99203465.2, filed October 21, 1999.

Applicants' amendment filed February 27, 2006 has been received and entered. Claims 1, 6, 22, 24 and 34 have been amended. Claims 2-5, 7, 23 have been canceled. Claims 1, 6, 8-22, 24-36 are pending.

Election/Restriction

Applicant's election with traverse of group I in the reply filed on July 19, 2005 was acknowledged. The requirement was still deemed proper and made **FINAL**.

The amendment filed on February 27, 2006 amending all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because a nucleic acid encoding AAP was elected, and now claim 1 has been amended to recite that the nucleic acid encodes AAP "and apoptin". Review of the previous claims did not recite that the nucleic acid encoded or comprised coding sequences for multiple proteins. Newly submitted claims are drawn to a separate and distinct invention because it comprises unique sequences that would have been restricted into different groups. The search of the AAP sequence would not identify the apoptin sequence. As presented

Art Unit: 1632

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.


The inventions are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product, and the species are patentably distinct (MPEP § 806.05(j)). In the instant case, the intermediate product is deemed to be useful in and of itself, and could be combined with other materials such as vectors or gene delivery vehicles for use in inducing apoptosis in a cell, or in generating nucleic acid probes, and the inventions are deemed patentably distinct because there is nothing on this record to show them to be obvious variants.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Woitach whose telephone number is (571) 272-0739.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla, can be reached at (571) 272-0735.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group analyst Dianiece Jacobs whose telephone number is (571) 272-0532.

Joseph T. Woitach


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